

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

MICHAEL DELBRIDGE

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Criminal No. 05-0135
ELECTRONICALLY FILED

**MEMORANDUM ORDER OF COURT RE: PRO SE PETITION REQUESTING
AMENDMENT PURSUANT TO FED.R.CIV.P. 15(C) AND 15(C)(1)(B) (DOC. NO. 220)**

On February 4, 2008, after pleading guilty to Count III of a 3 count indictment, Defendant Michael Delbridge was sentenced to 188 months imprisonment to be followed by a 5-year term of supervised release (the low-end of the applicable advisory guideline range). Doc. No. 184.

Pursuant to the plea agreement, which included an appellate waiver, the Government moved to dismiss Counts I and II of the indictment. Presently before this Court is Defendant's Petition requesting Amendment Pursuant to Fed.R.Civ.P. 15(c) and 15(c)(1)(B) of his previously filed Motion to Vacate under 28 U.S.C. § 2255. Doc. No. 220. Defendant moves this Court for various relief including an evidentiary hearing and resentencing, because he alleges that he was provided with ineffective assistance of counsel (beginning during plea negotiations) and should not have been classified as a career offender. Id.

Since Defendant's change of plea, this Court has addressed his desire to withdraw his guilty plea and his dissatisfaction with counsel on several occasions, including: Memorandum Order Denying Motion to Withdraw Guilty Plea and Granting Motion to Appoint New Counsel for Sentencing (Doc. No. 149), Tentative Findings and Rulings (Doc. No. 180), Memorandum Opinion Denying Pro Se Motion to Vacate, Set Aside or Correct a Sentence by a Person in Federal

Custody Pursuant to 28 U.S.C. § 2255 (Doc. No. 202), and Memorandum and Order Denying Certificate of Appealability (Doc. No. 209). This Court, as affirmed by the United States Court of Appeals for the Third Circuit, has consistently held that Defendant knowingly and voluntarily changed his plea to guilty and waived his right to file an appeal from the judgment of guilty and sentence except in specific inapplicable circumstances. *See United States of America v. Delbridge*, 11-1254 (3rd Cir. March 11, 2010 and Nov. 15, 2012).

Defendant, in his current Petition “only want[s] to simplify and amplify his Original § 2255 . . . and to apply the new retroactive application of the ‘plain error’ standard, that Petitioner has reserved in his original §§ 2255.” Doc. No. 220, 12. He relies on the United States Supreme decision in *Mayle v. Felix*, 545 U.S. 644 (U.S. 2005) which relates to amendment of federal habeas petitions and *Henderson v. United States*, 11-9307 (U.S. Feb. 20, 2013) which addresses the plain error rule within the meaning of Federal Rule of Criminal Procedure 52(b). To the extent that this is similar to a Motion to Vacate the Court’s previous denial of his habeas petition, it is not an issue for this Court.

Defendant’s Petition does not affect the fact that he waived his right to file such a document attacking his conviction and sentence. The United States Court of Appeals for the Third Circuit thoroughly reviewed this Court’s change of plea colloquy and Defendant’s first § 2255 Motion before finding that Defendant could not bring such an appeal because of his applicable appellate waiver. This continues to be the case. Enforcing Defendant’s waiver would not result in a miscarriage of justice as previously noted by the United States Court of Appeals in this case. See Doc. No. 219-1, 9.

The Court has not ordered a response from the Government or scheduled an evidentiary

hearing because it is clear from both the Motion and the record that Defendant is not entitled to the relief he requests. *See* 11-1254 (3d Cir. Nov. 15, 2012), 5, citing 28 U.S.C. § 2255(b).

AND NOW, this 16th day of January, 2014, IT IS HEREBY ORDERED THAT Defendant's Petition Requesting Amendment Pursuant to Fed.R.Civ.P. 15(c) and 15(c)(1)(B) is DENIED.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All counsel and parties listed on ECF

ADDRESS AS OF 1/9/14
Michael Delbridge
08544-068
FCC Beaumont
P.O. Box 26040
Beaumont, TX 77720
LEGAL CORRESPONDENCE